Filed 10/15/16 In re I.B. CA1/1

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re I.B., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. I.B., Defendant and Appellant.	A145621 (Sonoma County Super. Ct. No. JV38103)

Appellant I.B. admitted that he intimidated a witness with force for the benefit of a criminal street gang. He was initially placed on probation, but he soon violated the terms of his probation, and the juvenile court ordered him committed to the Division of Juvenile Justice (DJJ).[1] I.B. argues that this order should be reversed because (1) the juvenile court committed misconduct, (2) the order is not supported by sufficient evidence, and (3) he received ineffective assistance of counsel. We disagree and affirm.

[1] The DJJ is part of the Department of Corrections and Rehabilitation, and it includes the Division of Juvenile Facilities, which until July 1, 2005, was known as the California Youth Authority (CYA). (*In re D.J.* (2010) 185 Cal.App.4th 278, 280, fn. 1.)

I.
FACTUAL AND PROCEDURAL BACKGROUND

The Sonoma County probation department has been involved in I.B.'s life since October 2011, when it received a referral that I.B. was found at his elementary school with 32.8 grams of marijuana in his backpack. Over the next three years, the probation department received four additional referrals about I.B. ranging from shoplifting to drug possession, but all of these referrals were either handled informally or no action was taken.

In August 2014, a staff member at I.B.'s high school saw I.B. smoking an e-cigarette on school grounds, and a subsequent investigation revealed a total of 7.5 grams of hash oil in a compartment of the cigarette. A juvenile wardship petition was filed on October 9, 2014, alleging that I.B. unlawfully possessed concentrated cannabis in violation of Health and Safety Code section 11357, subdivision (a). Later that month, he admitted the violation in exchange for the district attorney's office not filing a petition in connection with a separate incident.

The probation department recommended that I.B. be given "the least restrictive dispositional option" but noted that it would be "determined in very short order if [I.B.] is unable to comply with the forthcoming terms and conditions of probation, specifically his ability to abstain from the use of marijuana, something that appears to be the common denominator to the multiple referrals." The probation department recommended that I.B. be placed on formal probation and proposed various terms and conditions of probation.

At the disposition hearing in November 2014, the juvenile court agreed with most of the probation department's recommendations, except it believed that wardship was necessary instead of formal probation so that the probation department could more effectively address what the court considered to be I.B.'s "substantial" marijuana problem. The court adjudged I.B. a ward of the court, ordered I.B. to reside in his mother's house, and scheduled a review hearing for the following March.

I.B. appeared before the juvenile court less than two months later, however, in connection with a gang-related incident at his high school. According to a probation report, five students who associated with the Varrio Santa Rosa Norteño gang took another student into a bathroom and assaulted him. The victim was described by his mother as "a special needs student who struggles with social, language, and comprehension skills." The five students involved in the assault were arrested. I.B. was not involved in the incident, but I.B. later saw the assault victim in the school locker room, glared at him for several minutes, and then demanded to know if the victim had "snitched," which the victim believed was a reference to the students' arrest because I.B. was a friend of those students and appeared to belong to the gang. Although the victim denied "snitching," I.B. punched him on the right arm and in the face as he backed away from I.B. The victim fell to the concrete floor. He told a school resource officer that the punch in the face "hurt pretty bad" but that he did not lose consciousness. He suffered swelling and bruising, however, and two family friends informally monitored him for a few weeks after the attack. When questioned about the incident, I.B. admitted hitting the victim but said he did so because the victim made fun of his (I.B.'s) weight. I.B. also "denied being gang-involved but acknowledged that he associated with Norteños."

A notice of violation under Welfare and Institutions Code section 777,[2] and a new wardship petition were filed on January 13, 2015, alleging that I.B. committed witness intimidation with the use of force and in furtherance of a criminal street gang (Pen. Code, §§ 136.1, subd. (c)(1), 186.22, subd. (b)(1)(B)—count 1), actively participated in a pattern of criminal gang activity (Pen. Code, § 186.22, subd. (a)—count 2), and battery on school property in furtherance of a criminal street gang (Pen. Code, §§ 243.2, subd. (a), 186.22, subd. (b)(1)(A)—count 3). We refer to these filings as the gang-related intimidation filings.

At the hearing on the gang-related intimidation filings, a new attorney was appointed for I.B. because his previous attorney reported a conflict, possibly because the

[2] All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

public defender's office was representing the students involved in the first assault against the victim. The new attorney was unavailable for the hearing because of a family emergency, but another attorney appeared in his place to represent I.B. The juvenile court followed the probation department's recommendation that I.B. be detained in juvenile hall, and the matter was put over until the following week.

Before the next court hearing, another notice of violation (§ 777) and wardship petition was filed, this time alleging that I.B. had received a stolen computer in violation of Penal Code section 496, subdivision (a) (stolen-computer filings), after a stolen computer was found under I.B.'s bed during a probation search. At the previously scheduled hearing, I.B.'s new attorney stated that I.B. denied the allegations as to all the new filings and said he (the attorney) was unaware that I.B. had previously been found to belong to a gang. The parties stated they would prepare for a jurisdictional hearing on the allegations.

No jurisdictional hearing was ever held, however, because I.B. entered a plea as to the gang-related intimidation filings. He admitted count one, that he intimidated a witness with force for the benefit of a criminal street gang (Pen. Code, §§ 136.1, subd. (c)(1), 186.22, subd. (b)(1)(B)). In exchange, the district attorney's office dismissed counts two and three of the gang-related intimidation petition, the related notice of violation (§ 777), as well as both of the stolen-computer filings. After the juvenile court took I.B.'s plea, it referred the matter to the probation department for a disposition report.

As part of its investigation, the probation department spoke with the victim's mother, who reported that she and the victim's' father decided that the victim should move to be with his father in a different city during the week to ensure the victim's safety. The department also spoke with staff who supervised a work crew to which I.B. was assigned, and I.B. was reported to be unproductive and to have a poor attitude. As for I.B.'s statement to the department, he "adamantly denied" calling the victim a snitch, said the victim had called him a "fat ass," said that punching the victim "had nothing to do with the attack on the victim a few days before," and also reported that he was not

involved in a gang. The probation department considered this explanation to be "highly suspect" because it seemed "extremely unlikely that this particular victim, who was probably completely terrified after the first assault, would call anyone names, let alone someone he knew associated with his assailants."

I.B. also denied knowing anything about the stolen computer that was found in his room and stated that he was "hella surprised" that a probation officer found it under his bed. I.B. further told the probation department that he admitted the sustained offense only because he believed that admitting the count would mean he would be released from juvenile hall sooner. He was angry about the sustained gang allegation, because he claimed he was not in a gang. I.B.'s mother also insisted that I.B. was not involved in a gang and stated that items found in their home that demonstrated association with Norteños had been "misconstrued." By contrast, staff at I.B.'s school reported that "while the minor does not appear to be overtly gang-involved, he '100%' associates with the Norteño-involved boys who assaulted the victim the first time."

The probation department reported that "[i]n general, it would appear that [I.B.] has very little respect for the authority of the Court or this department, and he has shown no desire to make changes in his behavior." A departmental screening committee expressed concern about the gravity of I.B's offense and the fact he failed to take responsibility for his actions, but committee members felt that "home removal was [not] immediately necessary if [I.B.] could be referred to a structured program with more intensive supervision than he has experienced thus far." According to the probation department, "Everyone was clear that if [I.B.] is offered an opportunity to remain at home, it will be his one and only chance to stay there, and if he violates his court orders or re-offends, far more restrictive programming will be considered, up to and including DJJ." The committee ultimately recommended that I.B. be screened for a program called Vista Academy, which would last several months, provide him with needed services, and allow him to remain at home and play football if he remained compliant.

At the disposition hearing, the juvenile court opined that the probation department's recommendation was "rather generous." The deputy district attorney stated

that the People did not support the recommendation to Vista, because I.B. was "in complete denial" over the incident and his gang involvement. The deputy requested instead a "90-day diagnostic at DJJ." I.B.'s attorney stated that I.B. understood the situation he was in and that I.B. would be happy to answer any questions from the court, and counsel submitted the matter on the probation department's report. We quote at length the exchange that followed, to provide context to the serious charges that I.B. levels on appeal about the juvenile court:

"THE COURT: Let me just tell you something, [I.B.] I've been on the bench longer than you've been alive. [Your attorney] is very experienced, Ms. Ballard, Mr. Newsome, the people at probation. Ms. Nash has been a probation officer, I would guess—I don't want to guess about her age, but I would say more than 20 years. Wouldn't you, Mr. Newsome?

"PROBATION OFFICER: Yes.

"THE COURT: More than 20 years in your department.

"Do you know what steer manure is? A nice way of saying BS. Steer manure. Well, steer manure and filet mignon are both barnyard products that come from beef. So we know the difference. So you want to try and give me a bunch of BS and tell me it's filet mignon, I can tell the difference, as can everybody else here.

"So, number one, you are not going to succeed in any program in probation anywhere unless you start being honest, number one, with yourself. Just try to put a load of crap over on people, it is not going to fly. You go to Vista and try to give them a line of bull, and they're going to see right through it. So you need to, first of all, be honest.

"We'll see what happens. I'll tell you, you're looking at some pretty serious consequences. You need to get realistic. I see this thing, 'I want to go to college and play football.' That's a great goal. But you're not going to do it with a 1.35 GPA. You will not even get on the practice field. They may not let you sign up. You don't qualify. I don't care how good you are, they're not going to let you play. You have to have a 2.0 and no failing grades or you don't get to sign up for the team. You can't try out. The coach isn't going to waste their time. The CIF isn't going to let you play.

"So at this point I will find good cause to continue it, allow him to have a pass to go interview with Vista.

"And you'd better be honest with them, that's all I can say."

The juvenile court then continued the matter to allow time for an interview with Vista.

In short, this exchange reflects that the court shared the probation department's skepticism about I.B.'s version of events but nonetheless agreed to follow the department's recommendation that I.B. be evaluated for Vista. I.B.'s counsel apparently does not see it this way. In one of several instances of distorted and unpersuasive hyperbole, I.B.'s counsel characterizes the juvenile court's remarks in the appellate briefing as a "scatological and threatening tirade" that shows an improper "prejudging [of] dispositional issues."[3]

Following an interview with Vista, I.B. was found acceptable for the program, and staff said he could start in mid-March. The probation department reported to the juvenile court that although I.B. had not been entirely compliant at juvenile hall, his "overall compliance" with "rules and expectations was good."

At the continued hearing, the deputy district attorney maintained that it was unlikely that I.B. would succeed on probation given his behavior at juvenile hall. The deputy recommended that I.B. undergo a 90-day diagnostic assessment in anticipation of an ultimate commitment to DJJ. I.B.'s attorney expressed a shared concern that I.B. would face a DJJ commitment if he did not use the resources available to him at Vista, and the attorney submitted on the department's recommendations. The court then addressed the parties as follows:

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[3] Concerned about counsel's hyperbole and some differences between her characterization of events below and the appellate record, the court wrote to I.B.'s appellate attorney in advance of oral argument and asked her to be prepared to discuss specific discrepancies. She was prepared, and she also wrote a letter to the court apologizing for some errors but defending other characterizations as being a reasonable interpretation of events that occurred below.

"THE COURT: I agree with you. He either gets it or not. If he does not, I will not waste time with a 90-day diagnostic. It would be straight to DJJ. He can visit his buddy there doing six years.

"So in the first wave [a reference to the five students who first attacked the victim]—as [the deputy district attorney] called this the second wave [a reference to I.B.'s assault on the victim]. In the first wave one fellow received a six-year sentence, one a two-year commitment. So you can kind of figure out where you might fall in that criteria if you mess up Vista. You have an opportunity to make it. You can see where the People are, the district attorney's office, and where I am. You're not going to have any wiggle room. If there is any gang stuff, then it's all over."

The juvenile court ordered that I.B. be retained as a ward of the court, and it imposed various conditions, including gang-related conditions such as that I.B. register as a gang member, not associate with known gang members, and not wear or use any gang paraphernalia. The plan at this point was for I.B. to participate in Vista.

Less than two weeks later, I.B. was detained in juvenile hall, and the probation department filed a notice of violation containing two allegations: that I.B. (1) associated with known gang members on two separate days (March 12 and 14, 2015) in violation of the juvenile court's order and (2) possessed gang paraphernalia on March 19 in violation of the court's order. The notice recommended that I.B. be released from juvenile hall and that he serve 30 to 45 days "on Community Detention, level one."

At the detention hearing on the notice, I.B.'s attorney submitted on the recommendation. The juvenile court stated, however, that it did not intend to follow the recommendation. I.B. then denied the allegations, and the matter was set for a contested hearing. As for whether I.B. should be detained, the juvenile court noted that although the probation department had recommended that I.B. be released on community detention, the court did not intend to follow that recommendation. The court stated, "I would advise probation and the intake folks to take a look at perhaps what the last chronos may have been in terms of what this court said in terms of what would be happening next if the minor did not take advantage of the opportunity that was given to

him. And we'll find out on April 8th [the date of the contested hearing] if that allegation made by probation is true." According to I.B., this statement amounted to "appl[ying] pressure" to the probation department. The court ordered that I.B. be detained in juvenile hall pending the hearing.

For reasons that are unclear in the record, the parties returned to court on April 1 before a different judge, and I.B.'s attorney raised the possibility of reaching a negotiated disposition. He explained that I.B. had been accepted into Vista but that a probation officer thereafter found what appeared to be gang-related text messages and a series of photos on I.B.'s telephone. The attorney wanted I.B. to participate in Vista but was concerned that the judge assigned to the case, who "usually follows the screening committee" (which in this case would mean sending I.B. to Vista), was "fed up" with I.B. and "was going to skip over the 90-day diagnostic and send him right to DJJ." The attorney proposed that I.B. agree to give up his phone for a period of time in exchange for him participating in Vista, and asked, "Perhaps maybe the prosecution has the authority to offer that? Or we should set it for a disposition report and see what the screening committee says?"

The deputy district attorney responded, "Well, Your Honor, I don't know if [I.B.'s attorney] is familiar—I know you're not that familiar with juvenile. But I don't have the authority to enter into a disposition. I have no objection to having a disposition report written, and then we could all weigh in on what we think is appropriate. *But I can't bind the court into a disposition*. So I can't offer anything. Our offer is that he admit the petition." (Italics added.) I.B. omits the italicized portion of the attorney's statement, which in context appears to be a reasonable statement that she could not bind another judge regarding disposition.[4] It also appears that it is at least possible that the attorney was acknowledging that the judge filling in on the case was "not that familiar" with a juvenile-court assignment. On appeal, however, I.B. suggests it was *his own attorney* who lacked experience in juvenile court, which is in fact contrary to his attorney's

[4] I.B.'s appellate attorney attributes the omission to possibly losing her place while transcribing the passage and states that the omission was inadvertent. (*Ante*, fn. 3.)

statement reflecting a familiarity with how the assigned judge "usually" handles recommendations from the probation department.

In any event, the parties continued to discuss how the case might proceed. When asked what might be proposed in a disposition report, the probation officer explained that the probation department had made a recommendation in the petition alleging a violation under section 777, that the judge did not agree "at all" with the recommendation of community detention, and that the judge "directed us to take another look at the notes from the last hearing in which he indicated that if there were any violations, as the underlying offense is a very serious offense, he specifically said any gang violations, that that would be it and the court would order DJJ. [¶] *So, that being said, we did make a recommendation. If it's ordered for a report, we will take another look at it. We would certainly take into account what other statements* [*I.B.*] *gives us at that time. I can't say at this time whether our recommendation will remain the same or if it will change*." (Italics added.) I.B. omits the italicized portion of the probation officer's statements and characterizes what he does quote as "confirm[ation] that the department was responding to pressure" from the juvenile court. But in doing so, he ignores that the officer *did not yet know* whether the department's recommendation would in fact change.[5] I.B.'s attorney and the judge who was filling in agreed that it would be best if the parties kept the scheduled hearing and kept working on a possible resolution.

At the scheduled April 8 hearing, the deputy district attorney reported that the single witness to testify was unavailable that day and also stated that a new notice of violation (§ 777) was anticipated. The court continued the hearing until the following week.

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5 I.B.'s counsel contends in her supplemental letter to the court (*ante*, fn. 3) that omitting the italicized portion of the probation officer's statement is not misleading because only the quoted passage is relevant to the trial court's "intention to place pressure upon the Probation Department" and further observes that respondent "apparently did not consider the second paragraph [of the officer's statement] important, because it is neither quoted nor mentioned in Respondent's Brief." However respondent views the omitted portion, we believe it was highly relevant to whether the probation department was supposedly experiencing pressure from the trial court.

An amended notice of violation was filed on April 10. The first count was amended to add an allegation that, in addition to associating with known gang members on March 12 and 14, I.B. associated with a known gang member on April 7. The second count was amended to allege that, in addition to possessing gang paraphernalia on March 19, I.B. also "gestured hand signals indicative of affiliation with a Norteno criminal street gang" on April 7. The attorney who had been representing I.B. was unavailable for a brief hearing held on April 13, but the attorney who appeared on I.B.'s behalf stipulated that I.B. had been properly arraigned on the notice and advised of his rights. The attorney also stated that I.B.'s regular attorney would meet with I.B. the following day (April 14) to discuss recently produced discovery.

The attorney apparently did meet with I.B., and the parties returned to court that day. I.B.'s attorney said, "I see from this petition that they were using a computer that was in the study area and then taking photographs. So it seems that my client has problems focusing and not realizing what's going to be happening afterward and he doesn't realize the certainty of getting apprehended when something like this happens." The attorney proposed that I.B. participate in Vista but not be allowed to have a cell phone. The juvenile court did not specifically address the proposal. Instead, it accepted I.B.'s denial of the petition's allegations, and a contested hearing was scheduled for April 28, with an "intermediate date" of April 24.

No contested hearing was ever held, however, because when the parties met again on April 24 before a different judge, I.B. admitted the allegations of the amended notice of violation. After the juvenile court explained to I.B. the rights he was giving up by entering an admission, the court asked I.B.'s attorney whether he was confident that I.B. understood those rights. The attorney responded, "I think—we've had many discussions. I think he's got a very good understanding of what's going on, I believe." I.B.'s admission meant that he faced possible confinement of a little more than 109 months. After the juvenile court accepted I.B.'s admission, the court asked, "All right. Do you want to proceed to disposition today?" In his appellate briefing, I.B. contends that this question "confirm[ed] that he [the judge] had no interest in a dispositional report or

testimony." But the statement was made by a *different judge* from the judge who entered the dispositional order from which I.B. appeals, and it appears that the April 24 hearing was the *only one* handled by this different judge (a mistake for which I.B.'s counsel apologizes in her supplemental letter to the court, *ante*, fn. 3). In any event, I.B.'s attorney said he understood that a disposition report would be prepared, and the matter was referred to the probation department and put over for two weeks.

When I.B. spoke with the probation department, he reported that he felt he had not violated the terms of his probation "because the conversation he had with his friend was 'normal' and not gang related." He acknowledged he was a member of the Norteño gang but said he did "not represent any specific set." Staff at juvenile hall reported that I.B. was one of the best behaved residents in his unit. Representatives from the probation department, Juvenile Hall, the Departmental Commitment Program, and Mental Health, as well as the education school liaison, met as a screening committee on May 5 to discuss I.B.'s case. According to the probation department, committee members "believed that the minor lacked insight into his actions and ongoing gang involvement, and ultimately felt he ha[d] expended his opportunity to address these serious issues while in the community." The committee recommended that I.B. be committed to DJJ.

The probation department likewise recommended in its supplemental disposition report that I.B. be committed to DJJ. The department explained why it had changed its recommendation: "*During [I.B.'s] initial sentencing for his most recent offense, the Court made it quite clear to the minor that non-compliance would result in his being sent to the Department of Juvenile Justice*. The minor lasted less than nine days before being detained for associating with gang members and possessing gang paraphernalia. After his detention, the minor finally admitted he was a gang member, which we hoped demonstrated that he had possibly gained some insight and was now going to be more honest with probation and the court. As a result we recommended that he be afforded another opportunity in the community, because in the nine days he was out of custody he had not been able to truly receive any benefits from the counseling at Vista. Unfortunately, while in custody, the most intensive supervision that can be garnered on a

minor, he again chose to engage in further gang-related conduct. It is quite apparent that the minor is entrenched in the gang lifestyle and based on his continued affiliation and his underlying offense, he represents a danger to this community. In general, *it would appear that the minor has very little respect for the authority of the Court, and he has shown no desire to make changes in his behavior*." (Italics added.) In his opening brief, I.B. quotes the italicized portions of the probation report and omits the explanation provided, then characterizes the report as being the result of the juvenile court's pressure to issue a report that "vindicated [the court's] authority and made good on his earlier threats," thus "depriv[ing the judge] of information that he would have received had the Probation Department been left free to craft an independent and objective report."

At the disposition hearing on May 8, the deputy district attorney said the prosecution agreed with the recommendation. I.B.'s attorney emphasized I.B.'s good behavior in juvenile hall and argued that the Vista program would benefit I.B. The juvenile court stated, "Well, I'm always mystified when I make certain comments and I guess they're just not taken seriously. I guess I'd have to go back to when I was 16, 17. But I suspect that someone who had the power to send me to be locked up for a substantial period of my life, particularly more than half my life as it had been lived so far—he's facing nine years—I think I would take them seriously. And yet [I.B.] chose not to.

"At the first disposition on this matter the district attorney's office made it very clear that they thought that a commitment to the [DJJ] was appropriate, and should there be any violations they would be asking for it yet again. They asked for it at the initial disposition.

"On page six [of the most recent disposition report], the author of the report . . . obviously looked at the court's note, because he says, 'During his initial sentencing for his most recent offense, the Court made it quite clear to the minor that non-compliance would result in his being sent to the Department of Juvenile Justice.' And yet he can't give up this fascination, this entrenchment with the gang lifestyle. He's going to have the

opportunity to immerse himself in it as much as he wants, or he can probably choose to walk away from it.

"But when I say I'm going to send you to the [DJJ], frankly, I mean it." The juvenile court retained I.B. as a ward of the court, found he was eligible for commitment to DJJ, and committed him there. The court imposed a term of four years, five months, less than half the maximum term of confinement.

II.
DISCUSSION

A. The Scope of Our Review Is Narrow.

When I.B. entered his plea to the amended notice of violation, he signed a form acknowledging his "right to appeal the orders made by the Court *at the time of my disposition hearing*." (Italics added.) Unlike adults in adult criminal cases, juveniles in wardship proceedings are not required to obtain certificates of probable cause to perfect appellate review of "alleged errors arising before or in the process of . . . [the] admission of allegations" in a sentencing plea. (*In re Joseph B.* (1983) 34 Cal.3d 952, 957; cf. Pen. Code, § 1237.5; Cal. Rules of Court, rule 8.304(b).) But "the elimination of the need for a certificate of probable cause with respect to a juvenile appeal does not compel the conclusion that the minor should be permitted to bring up *any* claim of error." (*In re John B.* (1989) 215 Cal.App.3d 477, 483 [issue of voluntariness of a minor's confession not cognizable on appeal following admission of wardship petition], original italics.)

In this appeal, I.B. raises some issues that go far beyond the dispositional order committing him to DJJ and are based on mischaracterizations of the record as we have discussed above. As we shall discuss, these issues exceed the scope of our review and lack merit in any event.

B. I.B.'s Arguments Based on Alleged Judicial Misconduct Are Unfounded.

I.B. first contends that the juvenile court engaged in misconduct "by using scatological language in the courtroom, by coercing the probation department in a manner which subverted the dispositional process, and by committing the minor to DJJ in retribution for disrespecting the trial judge's authority." (Boldface and capitalization

omitted.) Our review of the record reveals that this is a gross mischaracterization of the proceedings.

As for I.B.'s objection on appeal to the juvenile court's supposed "scatological and threatening tirade" in which the juvenile court characterized I.B.'s denial that he was involved in a gang or knew anything about a stolen computer found under his bed as "a bunch of BS," I.B. forfeited this objection by failing to object below. (*People v. Seumanu* (2015) 61 Cal.4th 1293, 1320 ["As a general rule, a specific and timely objection to judicial misconduct is required to preserve the claim for appellate review"].)

Even assuming I.B. properly preserved the objection, we reject it on its substantive merits. I.B.'s apparent theory is that the judge's comments evidenced an improper "*pre*judging [of] dispositional issues."[6] (Italics added.) But the judge was commenting on a report *after* he had reviewed it and long *after* I.B. admitted allegations related to the underlying offense. We emphasize that immediately after the court made its allegedly threatening statements, it followed the probation department's advice that I.B. be referred to the Vista program over the prosecutor's objection. And at a later hearing, the juvenile court placed I.B. on probation despite the deputy district attorney's recommendation that I.B. be immediately evaluated for placement at DJJ. We wholly reject I.B.'s contention that he was denied due process.

We agree with respondent that when the juvenile court told I.B. he would be sent to DJJ if he did not succeed on probation, the court was essentially imposing a commitment to DJJ and staying the commitment as a suspended sentence, a procedure this court condoned more than 22 years ago. (*In re Kazuo G.* (1994) 22 Cal.App.4th 1, 9 ["A juvenile commitment may be imposed and stayed when probation is granted—to serve as a warning to the minor where his continued delinquency will lead"].) True, "a previously stayed commitment may not be *automatically* imposed in a subsequent

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6 I.B. also complains that the trial judge's use of foul "barnyard language" was disrespectful, and I.B. contends that he and his parents should not have been "exposed to such language." We have no reason to infer from the record that the judge's comments were intended to be disrespectful, and the comments do not undermine our confidence in the subsequent dispositional order.

disposition proceeding." (*Id.* at p. 8, italics added.) But I.B.'s claims—that the juvenile court "bullied the probation department into writing a report which recommended DJJ" without taking all relevant circumstances into consideration when issuing its disposition order—are unfounded. I.B. bases these claims on taking remarks of context. A fair reading of the record reveals that the probation department was skeptical of I.B.'s initial explanation for hitting another student and having been found with a stolen computer under his bed, but a committee that discussed a proposed disposition ultimately recommended that I.B. be given a chance in Vista, with the understanding he would face more severe consequences if he violated the terms of his probation. Although the juvenile court shared the deputy district attorney's concerns that I.B. would not succeed on probation, the court followed the probation department's recommendation. When I.B. first was accused of violating the terms of his probation, the probation department initially recommended that I.B. be released on community detention, but the juvenile court said it did not intend to follow that recommendation. A probation officer told a different judge that the department would prepare a disposition report but was unsure whether the recommendation would change. Multiple committee members met to discuss a possible disposition and ultimately recommended that I.B. be committed to DJJ because of yet another probation violation. The notion that committee members and the probation department were acting because of alleged bullying or undue pressure from the juvenile court is rank speculation and is unsupported by the record. The juvenile court reviewed that report and took it into consideration before it committed I.B. to DJJ. Because I.B.'s allegations of bullying and undue pressure are baseless, we likewise reject his claim that he was deprived of an "independent and complete dispositional report" because of the alleged judicial misconduct that led to a supposedly "distorted" report.

In sum, we reject I.B.'s arguments based on alleged judicial misconduct.

C. The Juvenile Court Did Not Abuse Its Discretion When It Committed I.B. to DJJ.

I.B. next argues that the juvenile court's order committing him to DJJ should be reversed because there was no evidence that he would benefit from such an order or that less restrictive alternatives would be ineffective. We are not persuaded.

Broadly speaking, juvenile wardship proceedings are "rehabilitative" in nature. (§ 202, subd. (b); *In re Eddie M.* (2003) 31 Cal.4th 480, 507.) Section 202, subdivision (b) mandates that juvenile offenders "receive care, treatment, and guidance consistent with their best interest," and such "guidance may include punishment that is consistent with the rehabilitative objectives of this chapter." (See also *In re Julian R.* (2009) 47 Cal.4th 487, 496.) The statute also provides, however, that while punishment "means the imposition of sanctions," it "does not include retribution." (§ 202, subd. (e); see also *Julian R.*, at p. 496 ["Juvenile proceedings continue to be primarily rehabilitative, disallowing punishment in the form of retribution"].)

A commitment to DJJ is the "most restrictive placement" for a juvenile ward. (*In re Eddie M.*, *supra*, 31 Cal.4th at p. 488.) "Nothing bars [DJJ] for section 602 wards who have received no other placement." (*Ibid.*) "[A]bsent any contrary provision, juvenile placements need not follow any particular order under section 602 and section 777, including from the least to the most restrictive. [Citations.] Nor does the court necessarily abuse its discretion by ordering the most restrictive placement before other options have been tried." (*Id.* at p. 507.) Before committing a ward to DJJ, however, the juvenile court must find that such a commitment would benefit the ward. (§ 734),[7] and the juvenile court made such a finding here. The finding must be supported by substantial evidence, but the specific reasons for such a commitment need not be stated in the record. (*In re Jose R.* (1983) 148 Cal.App.3d 55, 59.) We review the juvenile court's commitment to DJJ for an abuse of discretion. (*In re Travis J.*, (2013) 222 Cal.App.4th 187, 199.)

[7] Section 734 provides, "No ward of the juvenile court shall be committed to the Youth Authority [now DJJ, *ante*, fn. 1], unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the [DJJ]."

In arguing that there was no evidence to support the juvenile court's finding, I.B. relies on general legal principles and quotes selectively from legal authority that is not directly related to the issue to be decided. (E.g., *Miller v. Alabama* (2012) __ U.S. __, 132 S.Ct. 2455, 2464, fn. 5 [in holding that sentencing scheme mandating life in prison without possibility of parole for some juvenile offenders violated the Eight Amendment, court cited studies showing that adolescent brains are not yet fully mature and " 'that exposure to deviant peers leads to increased deviant behavior and is a consistent predictor of adolescent delinquency' "]; *Lehr v. Robertson* (1983) 463 U.S. 248, 261 [in case addressing father's due process right to notice of adoption proceedings, court acknowledged that the importance of familial relationships stems from emotional attachments that derive from intimacy of daily association].)

As for the facts of *this* case, I.B. contends "there was no overwhelming evidence" contradicting his claim that he punched the victim because the victim called him fat, as opposed to in retaliation for "snitching" on I.B.'s friends. Because the probation department responded so well below to I.B.'s claim, we quote its report at length: "While [I.B.] acknowledged that he needs to learn to walk away from insults, he took no responsibility for his actions and expressed no empathy for the victim ["a special needs student who struggles with social, language, and comprehension skills"]. [I.B.] seems to feel that he is the victim in this matter given that his justification for punching an essentially defenseless 14-year-old half his size was that the boy allegedly called him 'fat.' Neither he nor his mother seems to recognize that even if that is actually what happened, the minor's actions represent an *egregious overreaction at best*. It also seems *extremely unlikely* that this particular victim, who was probably completely terrified after the first assault, would call anyone names, let alone someone he knew associated with his assailants, making [I.B.]'s excuse for what he did *highly suspect*. If, in fact, the minor did commit this assault in retaliation for his friend's arrests, his actions are nothing but a shameful demonstration of the bullying and intimidation inherent in the gang lifestyle." (Italics added.)

This court likewise is highly skeptical about I.B.'s version of events, and his attempts to downplay the seriousness of his assault are not well taken. He claims that "[n]o injury resulted," whereas the victim's mother reported that the victim suffered swelling and bruising and was monitored for weeks. I.B. ultimately characterizes the incident merely as "a case of one kid punching another kid in a locker room" and states he "had never done anything more violent than punching another youngster," without ever acknowledging in his appellate briefs that the attack prompted the victim's parents to switch the vulnerable student to a different school in another city to ensure his safety.

After mischaracterizing the judicial proceedings below and downplaying his behavior that led to his DJJ placement, I.B. conjectures on how a different placement would have been more appropriate. But given the record before it, the juvenile court acted well within its discretion in committing I.B. to DJJ.

D. I.B.'s Claim that He Received Ineffective Assistance of Counsel Is Baseless.

I.B. next claims that the juvenile court's jurisdictional and dispositional orders should be vacated because he received ineffective assistance of counsel in the juvenile court. We reject this argument, which is based on the same sorts of factual inaccuracies that permeated his first two arguments.

The legal standard to show ineffective assistance of counsel is well established: the minor must show both that counsel's performance was deficient and that the performance prejudiced him. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *In re Julius B.* (1977) 68 Cal.App.3d 395, 401 [minor has right to effective assistance of counsel in delinquency proceedings].) "To establish deficient performance, a person challenging a conviction must show that 'counsel's representation fell below an objective standard of reasonableness.' [Citation.] A court considering a claim of ineffective assistance must apply a 'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance. [Citation.] The challenger's burden is to show 'that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment.' [Citation.]" (*Harrington v. Richter* (2011) 562 U.S. 86, 104.)

"With respect to prejudice, a challenger must demonstrate 'a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' [Citation.] It is not enough 'to show that the errors had some conceivable effect on the outcome of the proceeding.' [Citation.] Counsel's errors must be 'so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.' " (*Harrington v. Richter*, *supra*, 562 U.S. at p. 104.) " 'Surmounting *Strickland*'s high bar is never an easy task.' [Citation.] An ineffective-assistance claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the *Strickland* standard must be applied with scrupulous care, lest 'intrusive post-trial inquiry' threaten the integrity of the very adversary process the right to counsel is meant to serve. [Citation.] Even under *de novo* review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is 'all too tempting' to 'second-guess counsel's assistance after conviction or adverse sentence.' [Citations.] The question is whether an attorney's representation amounted to incompetence under 'prevailing professional norms,' not whether it deviated from best practices or most common custom. [Citation.]" (*Harrington*, at p. 105.) "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." (*Yarborough v. Gentry* (2003) 540 U.S. 1, 8.)

I.B. first attacks his plea bargain as to the gang-related intimidation filings, whereby he admitted that he intimidated a witness with force for the benefit of a criminal street gang, and the district attorney's office, in exchange, dismissed the remaining two counts of the gang-related intimidation petition and the related notice of violation (I.B. fails to mention the stolen-computer filings, both of which also were dismissed as part of the bargain). According to I.B., "[t]he consideration was nugatory and the bargain

illusory," because he received no benefit whatsoever from the plea bargain whereas the prosecutor "acquired everything on his shopping list."

Although trial counsel plays an important role in plea bargaining, there is no constitutional requirement that counsel negotiate a perfect plea bargain, and it is not this court's role to second-guess I.B.'s trial counsel. And in arguing that his plea was "outrageous[]," I.B. downplays the fact he admitted punching his victim and "underscore[s] . . . the fact there were no witnesses to the punching incident, no video or audio recording, . . . no physical evidence[,] . . . [and] not even a written or recorded statement from the victim," as if all—or any—of these things were necessary to support a factual basis for I.B.'s plea, let alone that their absence meant that his attorney could have negotiated a better plea bargain on his behalf.

True enough, attorney consent is required when a minor enters a plea in a juvenile delinquency proceeding, as our Supreme Court stressed in *In re Alonzo J.* (2014) 58 Cal.4th 924, 931, 939. (See also Cal. Rules of Court, rule 5.778(c)-(e).) I.B. is flatly wrong when he claims, however, that under *Alonzo J.* it was his trial attorney's duty "not merely to advise the Minor against entering into this plea agreement that could not possibly benefit him, but also to affirmatively block the agreement by withholding his consent." *Alonzo J.* concerned *solely* whether attorney consent was required when a minor enters a plea of no contest, it did not address issues related to attorney effectiveness, and the court specifically stated that it was not addressing "questions concerning how attorneys should exercise the authority to give or withhold . . . consent" or "separate issues of attorney ethics" (*Alonzo J.*, at p. 939)—the very issues I.B. raises in this appeal.

We also reject I.B.'s insinuation that his trial attorney passively agreed to I.B.'s desire to enter a plea agreement in order to be released from custody sooner because he (the attorney) had a "family crisis and heavy schedule in adult court, which caused him to miss approximately half of the court appearances in this case." Our review of the record as set forth above reveals that I.B.'s attorney met with him frequently, discussed the case

with him, was present for all important hearings, and satisfied himself that I.B. understood the proceedings against him.

We likewise reject I.B.'s argument that his attorney was ineffective when advising him after he was accused of violating the terms of his probation. I.B. claims that the notices of violation were "facially insufficient insofar as they did not articulate the violations charged with sufficient particularity to enable defense counsel to investigate and rebut the charges." Initially, we question whether this issue is cognizable on direct appeal given that I.B. admitted the allegations. (*In re John B.*, *supra*, 215 Cal.App.3d at p. 483.) But even if we assume that the issue is cognizable, we reject it on its substantive merits. The record makes it abundantly clear that I.B.'s attorney investigated and learned the substance of the allegations and continued to advocate that I.B. be permitted to participate in the Vista program. The juvenile court's ultimate rejection of this option is not evidence of deficient performance. It is simply speculation for I.B. to assert that his trial attorney "could have done much better." It is also wholly speculative to assert that had I.B.'s attorney presented "more placement options" the juvenile court might have selected one of them, not to mention somewhat ironic given that elsewhere I.B. argues that the juvenile court was so intent on committing him to DJJ that it pressured the probation department to recommend that as the sole option.

In sum, because the record before us does not reveal any deficiency in counsel's performance, we flatly reject I.B.'s argument that he received ineffective assistance of counsel.

III.
DISPOSITION

The dispositional order is affirmed.

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Humes, P.J.

We concur:

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Dondero, J.

_____

Banke, J.

A145621 *In re I.B.*